

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs August 28, 2002

**STATE OF TENNESSEE, ET REL. KATHY E. JONES v.
TIMOTHY R. SPIVEY**

**Appeal from the Juvenile Court for Warren County
No. 1746 Larry G. Ross, Judge**

No. M2002-00610-COA-R3-JV - Filed February 18, 2003

This appeal concerns an action by the state seeking enforcement of certain support orders in the juvenile court pursuant to Title IV-D of the Social Security Act, 42 U.S.C. §§ 651 *et seq.* The *State of Tennessee, ex rel. Kathy E. Jones* sought an order from the Warren County Juvenile Court requiring the payment of \$7,195 in child support and finding Timothy Spivey in contempt of said court for the failure to pay the child support arrearage. From the order of the trial court forgiving all but \$864.85 of the child support arrearage and refusing to find Spivey in contempt, the state appeals.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Vacated and Remanded**

WILLIAM B. CAIN, J., delivered the opinion of the court, in which BEN H. CANTRELL, P.J., and PATRICIA J. COTTRELL, J., joined.

Paul G. Summers, Attorney General & Reporter and Stuart F. Wilson-Patton, Senior Counsel, Nashville, Tennessee, for the appellant, State of Tennessee, ex rel. Kathy E. Jones.

Timothy Spivey, Doyle, Tennessee, Pro Se.

MEMORANDUM OPINION¹

A review of the record reveals that Mr. Spivey is the natural father of K.R.H., daughter of the relator, Kathy E. Jones. Contemporaneous with the order establishing paternity, the trial court

¹Court of Appeals Rule 10:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion, it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case.

ordered child support to be paid in the amount of \$100 per month. This order was entered in April of 1992. Six months later the state filed its first petition for contempt for the father's failure to pay the child support. By an agreed order in September of 1993, Mr. Spivey agreed to resume delinquent payments in exchange for the reservation of the consideration of the issue of contempt. On March 3, 1994, the State filed its second petition for contempt and a petition to establish health insurance. On April 6, 1994, Mr. Spivey filed his answer and counter-complaint seeking visitation. On June 23, 1994, an order was entered finding Mr. Spivey in criminal contempt and ordering \$50 to be paid on the arrearage on a monthly basis in addition to the existing \$100 obligation. The support action then was reinstituted by the filing of a new petition for contempt on January 31, 2001, alleging Mr. Spivey's continuing failure to pay the child support arrearage since the court's initial order in June of 1994. The court eventually heard this petition for contempt and modification on September 24, 2001. On November 16, 2001, the court entered an order refusing to find Mr. Spivey in contempt since August of 1994 and, forgiving all but \$864.85 of support. The court based its findings on Mr. Spivey's alleged mistaken belief that he had successfully surrendered all of his parental rights to the child K.R.H. From that order of the Warren County Juvenile Court the state appeals.

The statute regarding enforcement of child support orders is clear upon its face: "Any order for child support shall be a judgment entitled to be enforced as any other judgment of a court of this state and shall be entitled to full faith and credit in this state and in any other state. Such judgment shall not be subject to modification as to any time period or any amounts due prior to the date that an action for modification is filed and notice of the action has been mailed to the last known address of the opposing parties." Tenn. Code Ann. § 36-5-101(a)(5)(2001). As a result, the Warren County Juvenile Court's order forgiving the arrearage amounts to reversible error. *See Rutledge v. Barrett*, 802 S.W.2d 604, at 606 (Tenn. 1991).

At this point in the court's review, it bears noting that the trial court heard only arguments of counsel concerning the amount of arrearage owed, the amount of child support collected, and the contempt, if any, of the respondent. In light of our holding that the trial court's order was in error and controvened the plain language of Tennessee Code Annotated section 36-5-101, this case is remanded for a full hearing concerning the nature and extent of the child support arrearage and the issues of civil and criminal contempt. Costs on appeal are taxed against the appellee.

WILLIAM B. CAIN, JUDGE